



CITY OF LODI

I-2 COUNCIL COMMUNICATION

AGENDA TITLE: Adopt a resolution authorizing the City Manager to execute new contracts between current industrial contract customers and/or new contract customers and the City of Lodi (EUD) that will transition these customers to a standard rate over a three or four year period (EUD)

MEETING DATE: October 1, 2003

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: Adopt a resolution authorizing the City Manager to execute new contracts between current industrial contract customers and/or new contract customers and the City of Lodi (EUD) that will transition these customers to a standard rate over a three or four year period.

BACKGROUND INFORMATION: Before the energy crisis of 2001, contracts were undertaken with large industrial customers at a time when power costs were substantially below today's costs. Also, when these contracts were undertaken, a non-permanent economic development incentive was part of the contract structure. Some of these contracts were at retail rates on the order of 5 cents a kilowatt-hour and have not changed for over 5 years. These rates are substantially below our cost of power currently, 7 to 8 cents a kilowatt-hour. Other customers have seen substantial bill change in the last two years.

These contracts have expired. The Electric Utility Department (EUD) proposes to transition these customers to a regular EUD rate over a four-year period that the customer is eligible for given their level of consumption. Most of these contracts will transition to I-1. This I-1 rate is highly competitive and is the rate that General Mills is under. The four-year transition period should allow these customers to adjust. In addition, new significant customers will be transitioned in a similar manner as an economic development tool.

The following customers will be under a transition rate contract:

Cottage Bakery
Lodi Iron Works
CertainTeed
Schaefer Systems, Inc
Pacific Coast Producers

The contract methodology that specifies the transition is the same across all contracts. A sample contract is attached. The actual transition rates vary by customer; each customer transition rate sheet is attached.

The following customer is under a significant new customer contract:
Epic Plastics

APPROVED: _____

H. Dixon Flynn - City Manager



CITY OF LODI

COUNCIL COMMUNICATION

The Epic contract is attached.

FUNDING: None:

A handwritten signature in black ink, appearing to read "Alan N. Vallow", written over a horizontal line.

Alan N. Vallow
Electric Utility Director

PREPARED BY: Boris Prokop, Power Supply & Rates Manager

ANV/BP/lst

C: City Attorney
Finance Director

APPROVED: _____

H. Dixon Flynn - City Manager



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APPROVED: _____

H. Dixon Flynn - City Manager



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FUNDING: None:

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Alan N. Vallow
Electric Utility Director

PREPARED BY: Boris Prokop, Power Supply & Rates Manager

ANV/BP/lst

C: City Attorney
Finance Director

APPROVED: _____

A handwritten signature in black ink, reading "H. Dixon Flynn".

H. Dixon Flynn - City Manager

RATE AGREEMENT

BETWEEN

Cottage Bakery

AND

THE CITY OF LODI

This Agreement is made by and between Cottage Bakery ("Customer") and the CITY OF LODI ("City"), collectively called "the Parties" and individually as "Party". This Agreement supersedes the City's mandatory Rate Schedule assignment for this Customer.

WITNESSETH:

WHEREAS, City operates an electric utility system supplying electric power to City customers; and

WHEREAS, Customer is a customer whose rate agreement contract between the City has expired; and

WHEREAS, City desires to transition the Customer to their eligible rate schedule over a four year period so as to mitigate the immediate effects of coming under the eligible rate; and

NOW, THEREFORE, the Parties hereto agree as follows:

Section 1. Definitions. Whenever used in this Agreement, in either the singular or plural number, the following terms shall have the following respective meanings

- 1.1 "Agreement" is this contract.
- 1.2 "City" is the City of Lodi, a California Municipal Corporation.
- 1.3 "Customer" is "Facility" is the Customer's facility receiving service as defined in Exhibit A.
- 1.4 "Account" is defined in Exhibit A for the Customer.
- 1.6 "Parties" are collectively Customer and City.

- 1.7 "kWh" is a kilowatt-hour, an energy charge billing unit.
- 1.8 "billing cycle" is the monthly bill.
- 1.9 "Force Majeure", as used herein, means unforeseeable causes beyond the reasonable control of and without the fault or negligence of the Party claiming force majeure. Such an occurrence may include, but is not limited to, acts of God, labor disputes, sudden actions of the elements, actions or inactions by federal, state and municipal agencies, and actions or inactions of legislative, judicial, or regulatory agencies.
- 1.10 "eligible rate" is the scheduled rate at which the Customer would qualify given historical consumption as per accounts totaled in Exhibit A.
- 1.11 "totalization" is the aggregation of individual meter data so as to create a single billed account under a single rate schedule.
- 1.12 "current actual average rate winter/summer" is the average based on the total energy charges, demand charges and special discounts totaled divided by total energy (kWh) that apply to the contract accounts defined in Exhibit A for a typical actual monthly bill in the season designated for the annual period before the start of the anticipated phase of rate transition.
- 1.13 "current eligible average rate winter/summer" is the average based on the total energy charges, demand charges and market cost adjustments and other normal applicable charges totaled divided by total energy (kWh) that apply to the contract accounts defined in Exhibit A for the eligible rate utilizing actual billed energy and demand available from the current actual bill average rate determination by season.

Section 2. Rate Application.

2.1 The billing cycle charge for the Customer shall transition to the eligible rate for the Facilities and Accounts defined in Exhibit A over a four year phased transition. Exhibit A also defines what Facilities and Accounts will be totalized or treated as individual facilities for Billing purposes. There shall be four phases to the transition to full billing under the eligible rate as follows:

- **Phase I** October 1, 2003 to September 30th, 2004, Phase Setting = 3
- **Phase II** October 1, 2004 to September 30th, 2005, Phase Setting = 3
- **Phase III** October 1, 2005 to September 30th, 2006, Phase Setting = 2
- **Phase IV** October 1, 2007 on

The first three phases will provide a transition rate that is at a discount of the current eligible. At the fourth phase the Customer will be at the eligible rate and the contract will expire with normal rate procedures applying. In the two months before the commencement of Phases I to III, a determination of the phased rates will be made. The current average winter rate and average summer rate will be determined. The average eligible winter rate and summer rate will be determined for the eligible rate schedule. The transition rates will be the eligible rate schedule by season discounted by the transition percentage. The transition percentage is calculated by season and is determined as follows:

Where “A” equals seasonal average rate;

“E” equals seasonal eligible rate;

“P” equals phase setting from above;

“/” Is a divide operator;

“*” Is a multiply operator;

“^” Is a to the power operator;

$$\text{Transition Percentage} = (A * (E/A)^{(1/P)})/E$$

The transition percentage holds only for the coming phase. A new transition percentage is determined before the start of each phase. If the transition percentage exceeds 100%, the eligible rates apply. The City shall provide the Customer a copy of the determined transition discounted rates before the start of a new transition Phases I to III.

Section 3. Term of Agreement.

- 3.1 Upon signing by all Parties, this Agreement shall be binding for bills rendered on or after October 1st, 2003, and shall remain in effect subject to Paragraphs 3.2 and 3.3 below, for bills rendered through September 30th, 2007.
- 3.2 If either party fails to perform any of the provisions of this Agreement, the other party may, by written notice given within thirty days of such failure to perform, terminate this agreement. Customer may appeal such termination in writing to the Electric Utility Director. This is in addition to any other legal recourse Customer may have.
- 3.3 This Agreement cannot be terminated without mutual consent of the Parties.

Section 4. Force Majeure.

- 4.1 If either Party because of Force Majeure is rendered wholly or partly unable to perform its obligations under this Agreement, that Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected, provided that:
- The non-performing Party, within two weeks after the occurrence of the Force Majeure, shall give the other party a written report describing the particulars of the occurrence.
- The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure.
- 4.2 No obligations of either Party which arose before the occurrence causing the suspension of performance are excused as a result of the occurrence.

- 4.3 The non-performing Party uses its best efforts to remedy its inability to perform. This subparagraph shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgement of the Party involved in the dispute, are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party having the difficulty.

Section 5. Assignments.

- 5.1 Neither Party shall voluntarily assign its rights nor delegate its duties under this Agreement without the written consent of the other Party.

Section 6. Amendments.

- 6.1 This Agreement may be amended only by written instrument executed by the Parties or their successors.

Section 7. Severability.

- 7.1 In the event that any of the terms, covenants, or conditions of this Agreement shall be held invalid, the Parties intend that all other terms, covenants, and conditions and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that such provisions are not severable from all other provisions of this Agreement.

Section 8. Governing Law.

- 8.1 This Agreement shall be interpreted, governed by, and construed under the laws of the State of California.

Section 9. Counterparts.

- 9.1 This Agreement may be executed in counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

Section 10. Headings.

- 10.1 The headings to the articles in this Agreement are intended for convenience only and not for the purpose of interpreting the provisions of this Agreement.

Section 11. Notices.

- 11.1 Any notice, demand or request required or permitted to be given by either Party to the other and any instrument required or permitted to be tendered or delivered by either Party to the other may be so given, tendered or delivered, as the case may be, by depositing the same in any United States Post Office with postage prepaid, for transmission by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address designated below. Changes in such designation may be made by notice similarly given.

- 11.2 All written notices or questions shall be directed as follows:

To City: ELECTRIC UTILITY DIRECTOR

 CITY OF LODI

 1331 SOUTH HAM LANE

 LODI CA 95242-3995

To Customer: Cottage Bakery

 40 E. Neuharth Drive

 Lodi, CA 95240

Section 12. Non-waiver.

- 12.1 None of the provisions of the Agreement shall be considered waived by either Party except when such waiver is given in writing. The failure of any Party at any time or times to enforce any right or obligation with respect to any matter arising in connection with this Agreement shall not constitute a waiver as to future enforcement of that right or obligation or any right or obligation of the Agreement.

Section 13. Warranty of Authority.

- 13.1 Each of the Parties which has executed and delivered this Agreement represents and warrants that it has agreed to be bound by all the terms, covenants, and conditions of this Agreement and has acted with all the requisite capacity and authority and approval of its governing body.

IN WITNESS THEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers and their seal to be affixed, as of the day and year herein written.

CITY OF LODI

COTTAGE BAKERY

H. Dixon Flynn
City Manager

Terry Knutson
President

Date

Date

Approved as to Form:

Randall A. Hays
City Attorney

ATTEST:

Susan J. Blackston
City Clerk

Exhibit A

Customer Name: Cottage Bakery

Current Contract Accounts

Current Rate	Primary/Secondary	Meter	Account #	Location Designation	Location Address
C	Secondary/Totalized	35928	4553-4	40 E. Neuharth Dr.	All meters are
D1	Secondary/Totalized	29871	4553-4	40 E. Neuharth Dr.	labeled according
D2	Secondary/Totalized	29872	4553-4	40 E. Neuharth Dr.	to letters
D3	Secondary/Totalized	29873	4553-4	40 E. Neuharth Dr.	
B	Secondary/Totalized	30013	4553-4	40 E. Neuharth Dr.	

If eligible rate does not have a secondary rate, the rate will be the primary rate plus 5%

Transition rate discount does not apply to new facility below

Rate	Primary/Secondary	Meter	Account #	Location Designation	Location Address
I-1	Secondary	35784	49663-8	Inside Facility S. End	1831 S. Stockton

Transition Rate Sheet For Phase I starting September 1, 2003 for Cottage

Transition Discount Determination Given I1 + 5% as eligible Rate

Four Phases

Cottage Summer	Actual (A)	Phase 1 10/1/2003	Possible Phase 2 10/1/2004	Possible Phase 3 10/1/2005	Contract End I-1 10/1/2006
Kwh	1,762,721	1,762,721	1,762,721	1,762,721	1,762,721
Bill	\$ 87,408.94	\$ 104,936.26	\$ 118,554.51	\$ 133,940.10	
% annual change		20%	13%	13%	13%
Ave rate	\$ 0.0496	\$ 0.0595	\$ 0.0673	\$ 0.0760	\$ 0.0858
% as x/eligible	58%	69%	78%	89%	100%
Transition Discount		69%			
eligible/actual,(E/A)	173%				
(E/A)^(1/# phases)	120%				

Cottage Winter	Actual (A)	Phase 1 10/1/2003	Possible Phase 2 10/1/2004	Possible Phase 3 10/1/2005	Contract End I-1 10/1/2006
Kwh	1,442,004	1,442,004	1,442,004	1,442,004	1,442,004
Bill	\$ 72,682.23	\$ 81,469.79	\$ 87,920.81	\$ 94,882.65	\$ 102,395.75
% annual change		12.1%	7.9%	7.9%	7.9%
Ave rate	\$ 0.0504	\$ 0.0565	\$ 0.0610	\$ 0.0658	\$ 0.0710
% as x/eligible	71%	80%	89%	93%	100%
Transition Discount		80%			
eligible/actual,(E/A)	141%				
(E/A)^(1/# phases)	112%				

Transition Rates given Transition Discount

SUMMER Phase I 10/1/03-9/30/04			WINTER Phase I 10/1/03-9/30/04		
Demand	Secondary(\$/kw)		Demand	Secondary(\$/kw)	
Max Kw	\$ 2.20		Max Kw	\$ 2.52	
Peak Demand	\$ 7.46		Peak Demand		
Energy	Secondary (\$/kwh)		Kwh	Secondary (\$/kwh)	
Off Peak	\$ 0.0414		Off Peak	\$ 0.0470	
Partial	\$ 0.0522		Partial	\$ 0.0533	
Peak	\$ 0.0746		Peak	\$ -	
MCA	\$0		MCA	\$0	
Customer charge @ full I1 + 5% eligible for 5 meters			\$ 128.13	5	\$ 640.65

Version 9/12/03

Exhibit A

Customer Name: LODI IRON WORKS

Current Contract Accounts

Rate	Primary/Secondary	Meter	Account #	Location Designation	Location Address
X001	Primary	30006	12833-0	Pole on Vine Street (LIW1)	840 S. Sacramento St.

Non Contract Accounts

The following Accounts will be added to the transition rate schedule in Phase II

Rate	Primary/Secondary	Meter	Account #	Location Designation	Location Address
G11	Secondary	21568	12831	Inside Roll up Door	817 S. Sacramento St.
G13	Secondary	11226	12830	Inside Quanset N. Wall	810 S. Saramento St.
G2	Secondary	29585	12832	N. End Quanset Hut	820 S. Sacramento St.
G3	Secondary	35782	12833	Molding room (LIW2)	840 S. Sacramento St

Transition Rate Sheet For Phase I starting October 1, 2003 for Lodi Iron

Transition Discount Determination Given I1 + 5% as eligible Rate

Four Phases

Lodi Iron Works SUMMER	Actual (A)	Phase 1 10/1/2003	Possible Phase 2 10/1/2004	Possible Phase 3 10/1/2005	Eligible Rate (E) Contract End I-1 10/1/2006
Kwh	208,800	208,800	208,800	208,800	208,800
Bill	\$ 12,390.06	\$ 13,800.54	\$ 14,828.97	\$ 15,934.05	\$ 17,121.49
% annual change		11%	7%	7%	7%
Ave rate	\$ 0.0593	\$ 0.0661	\$ 0.0710	\$ 0.0763	\$ 0.0820
% as x/eligible	72%	81%	87%	93%	100%
Transition Discount		81%			
Eligible/Actual , (E/A)	138%				
(E/A)^(1/3)	111%				

WINTER	Actual (A)	Phase 1 10/1/2003	Possible Phase 2 10/1/2004	Possible Phase 3 10/1/2005	Eligible Rate (E) Contract End I-1 10/1/2006
Kwh	164,400	164,400	164,400	164,400	164,400
Bill	\$ 10,667.77	\$ 11,725.36	\$ 12,887.80	\$ 13,300.20	\$ 14,165.25
% annual change		10%	7%	7%	7%
Ave rate	\$ 0.0649	\$ 0.0713	\$ 0.0760	\$ 0.0809	\$ 0.0862
% as x/eligible	75%	83%	88%	94%	100%
Transition Discount		83%			
Eligible/Actual , (E/A)	133%				
(E/A)^(1/3)	110%				

Transition Rates given Transition Discount

SUMMER Phase I 9/1/03-8/31/04			WINTER Phase I 9/1/03-8/31/04		
Demand	Primary (\$/kw)	Secondary	Demand	Primary (\$/kw)	Secondary
Max Kw	\$ 2.43	\$ 2.56	Max Kw	\$ 3.02	\$ 3.17
Peak Demand	\$ 8.26	\$ 8.67	Peak Demand		
Energy	Primary (\$/kwh)		Kwh	Primary (\$/kwh)	Secondary
Off Peak	\$ 0.0569	\$ 0.0597	Off Peak	\$ 0.0562	\$ 0.0590
Partial	\$ 0.0717	\$ 0.0753	Partial	\$ 0.0638	\$ 0.0670
Peak	\$ 0.1024	\$ 0.1075	Peak		\$ -
MCA	\$ -		MCA	\$ -	
Customer charge @ full I1 meter charge			\$ 128.13	4	\$ 512.52

Version 9/22/03

Exhibit A

Customer Name: CertainTeed

Current Contract Accounts

Current Rate	Voltage	Meter	Account #	Totalize	Location Designation	Location Address
X003	Primary	35794	711-2	Single Primary at eligible rate	Pole on North Side	300 S. Beckman Rd.
X003	Secondary	35930	711-2	Both Secondary @ eligible rate +5 %	Blower Room North	300 S. Beckman Rd.
X003	Secondary	29862	711-2	Both Secondary @ eligible rate +5 %	Production Area South	300 S. Beckman Rd.

If eligible rate does not have a secondary rate, the rate will be the primary rate plus 5%; Totalize secondary as one channel

Primary not be totalized with secondary for billing but included with secondary to determine overall consumption eligibility

Version:9/22/03

Transition Rate Sheet For Phase I starting October 1, 2003 for CertainTeed

Transition Discount Determination Given I1 + 5% as eligible Rate

Four Phases

					Eligible Rate (E)
CeratinTeed Summer	Actual (A)	Phase 1 10/1/2003	Possible Phase 2 10/1/2004	Possible Phase 3 10/1/2005	Contract End I-1 10/1/2006
Kwh	1,223,600	1,223,600	1,223,600	1,223,600	1,223,600
Bill	\$ 53,491.47	\$ 66,246.95	\$ 76,398.83	\$ 88,106.41	\$ 101,608.10
% annual change		24%	15%	15%	15%
Ave rate	\$ 0.0437	\$ 0.0541	\$ 0.0624	\$ 0.0720	\$ 0.0830
% as x/eligible	53%	65%	75%	87%	100%
Transition Discount		65%			
eligible/actual, (E/A)	190%				
(E/A)^(1/# phases)	124%				

					Eligible Rate (E)
CertainTeed Winter Rate Change Schedule	Actual (A)	Phase 1 9/1/2003	Phase 2 9/1/2004	Eligible (E) Phase 3 9/1/2005	Contract End I-1 10/1/2006
Kwh	1,468,400	1,468,400	1,468,400	1,468,400	1,468,400
Bill	\$ 64,118.24	\$ 73,993.30	\$ 81,407.76	\$ 89,565.19	\$ 98,540.03
% annual change		15%	10%	10%	10%
Ave rate	\$ 0.0437	\$ 0.0504	\$ 0.0554	\$ 0.0610	\$ 0.0671
% as x/eligible	65%	75%	83%	91%	100%
Transition Discount		75%			
eligible/actual, (E/A)	154%				
(E/A)^(1/# phases)	115%				

Transition Rates given Transition Discount Phase I only

SUMMER Phase I 9/1/03-8/31/04			WINTER Phase I 9/1/03-8/31/04		
Demand	Primary (\$/kw)	Secondary(\$/kw)	Demand	Primary (\$/kw)	Secondary(\$/kw)
Max Kw	\$ 1.97	\$ 2.07	Max Kw	\$ 2.27	\$ 2.38
Peak Demand	\$ 6.68	\$ 7.02	Peak Demand		
Energy	Primary (\$/kwh)	Secondary (\$/kwh)	Kwh	Primary (\$/kwh)	Secondary (\$/kwh)
Off Peak	\$ 0.03707	\$ 0.03892	Off Peak	\$ 0.04220	\$ 0.04431
Partial	\$ 0.04676	\$ 0.04910	Partial	\$ 0.04788	\$ 0.05028
Peak	\$ 0.06677	\$ 0.07011	Peak		
MCA	\$0	\$0	MCA	\$0	\$0
Customer charge @ full G5 eligible for 3 meters			\$ 128.13	3	\$ 384.39

Version : 9/22/03

Exhibit A

Customer Name: Schaefer Systems

Current Contract Accounts

Rate	Primary/Secondary	Meter	Account #	Totalize	Location Address
X004	Secondary	35927	31119-1	All Secondary	1250 E. Thurman St.
X004	Secondary	35925	31119-1	All Secondary	1251 E. Thurman St.

If eligible rate does not have a secondary rate, the rate will be the primary rate plus 5%

DRAFT Transition Rate Sheet ,Phase I starting October 1, 2003 for SCHAEFER

Transition Discount Determination given I-1 plus 5% for secondary as the eligible rate

			Possible		Eligible (E)
SUMMER	Actual (A)	Phase 1 10/1/2003	Phase 2 10/1/2004	Phase 3 10/1/2005	Contract End I-1 10/1/2006
Kwh	642,900	642,900	642,900	642,900	642,900
Bill	\$28,846	\$35,392	\$40,561	\$46,484	\$53,275
% annual change		22.7%	14.6%	14.6%	14.6%
Ave rate	\$ 0.0449	\$ 0.0551	\$ 0.0631	\$ 0.0723	\$ 0.0829
% as x/eligible	54%	66%	76%	87%	100%
Transition Discount		66%			Eligible (E)
WINTER	Actual (A)	Phase 1 10/1/2003	Phase 2 10/1/2004	Phase 3 10/1/2005	Contract End I-1 10/1/2006
Kwh	766,500	766,500	766,500	766,500	766,500
Bill	\$34,344	\$39,401	\$43,178	\$47,318	\$51,857
% annual change		14.7%	9.6%	9.6%	9.6%
Ave rate	\$ 0.0448	\$ 0.0514	\$ 0.0563	\$ 0.0617	\$ 0.0677
% as x/eligible	66%	76%	83%	91%	100%
Transition Discount		76%			
Annual Bill	\$379,141	\$448,753	\$502,434	\$562,817	\$630,794

Transition Rates given Transition Discount

SUMMER Phase I 10/1/03-9/30/04			WINTER Phase I 10/1/03-9/30/04		
Demand	Secondary(\$/kw)	No Primary	Demand	Secondary(\$/kw)	No Primary
Max Kw	\$ 2.11		Max Kw	\$ 2.41	
Peak Demand	\$ 7.15		Peak Demand		
Energy	Secondary (\$/kwh)		Kwh	Secondary (\$/kwh)	
Off Peak	\$ 0.03965		Off Peak	\$ 0.04484	
Partial	\$ 0.05003		Partial	\$ 0.05087	
Peak	\$ 0.07143		Peak		
MCA	\$0		MCA	\$0	
Customer charge @ full I-1 eligible for 2 meters			\$ 128.13	2	\$ 256.26

version:9/22/03

Exhibit A

Customer Name: Pacific Coast Producers (PCP)

Current Contract Accounts

Rate	Primary/Secondary	Meter	Account	Location Designation	Location Address
X007	Primary	29861	16488-9	Tokay @ Main	32 E. Tokay St.

Transition Rate Sheet For Phase I starting October 1, 2003 for Pacific Coast Producers

Transition Discount Determination Given I1 + 5% as eligible Rate

Four Phases

					Eligible Rate (E)
PCP					Contract End
SUMMER	Actual	Phase 1 10/1/2003	Possible Phase 2 10/1/2004	Possible Phase 3 10/1/2005	I-1 10/1/2006
Kwh	1,238,400	1,238,400	1,238,400	1,238,400	1,238,400
Bill	\$ 78,042	\$ 86,978	\$ 93,499	\$ 100,507	\$ 108,042
% annual change		11%	7%	7%	7%
Ave rate	\$ 0.0630	\$ 0.0702	\$ 0.0755	\$ 0.0812	\$ 0.0872
% as x/eligible	72%	81%	87%	93%	100%
Transition Discount		81%			
eligible/actual,(E/A)	138%				
(E/A)^(1/# phases)	111%				

					Eligible Rate (E)
PCP					Contract End
WINTER	Actual	Phase 1 10/1/2003	Possible Phase 2 10/1/2004	Possible Phase 3 10/1/2005	I-1 10/1/2006
Kwh	43,200	43,200	43,200	43,200	43,200
Bill	\$ 2,221	\$ 2,482	\$ 2,673	\$ 2,879	\$ 3,100
% annual change		12%	8%	8%	8%
Ave rate	\$ 0.0514	\$ 0.0575	\$ 0.0619	\$ 0.0666	0.071761095
% as x/eligible	72%	80%	86%	93%	100%
Transition Discount		80%			
eligible/actual,(E/A)	140%				
(E/A)^(1/# phases)	112%				

Transition Rates given Transition Discount

SUMMER Phase I 9/1/03-8/31/04			WINTER Phase I 9/1/03-8/31/04		
Demand			Demand		
	Primary (\$/kw)			Primary (\$/kw)	
Max Kw	\$ 3.02		Max Kw	\$ 3.02	
Peak Demand	\$ 10.25		Peak Demand		
Energy			Kwh		
	Primary (\$/kwh)			Primary (\$/kwh)	
Off Peak	\$ 0.05765		Off Peak	\$ 0.05491	
Partial	\$ 0.07297		Partial	\$ 0.06229	
Peak	\$ 0.10337		Peak		
MCA	\$0		MCA	\$0	
Customer charge @ full I1 eligible for 3 meters			\$ 128.13	1	\$ 128.13

Version 9/22/03

RATE AGREEMENT

BETWEEN

Epic Plastics

AND

THE CITY OF LODI

This Agreement is made by and between **Epic Plastics** ("Customer") and the CITY OF LODI ("City"), collectively called "the Parties" and individually as "Party". This Agreement supersedes the City's mandatory Rate Schedule assignment for this Customer.

WITNESSETH:

WHEREAS, City operates an electric utility system supplying electric power to City customers; and

WHEREAS, Customer is a significant new customer; and

WHEREAS, City desires to transition the new Customer to their eligible rate schedule over two years as an economic incentive to locate in the City of Lodi as part the City's economic development policy; and

NOW, THEREFORE, the Parties hereto agree as follows:

Section 1. Definitions. Whenever used in this Agreement, in either the singular or plural number, the following terms shall have the following respective meanings

1.1 "Agreement" is this contract.

1.2 "City" is the City of Lodi, a California Municipal Corporation.

1.3 "Customer" is Epic Plastics.

1.4 "Facility" is the Customer's facility receiving service as defined in Exhibit A.

1.5 "Account" is defined in Exhibit A for the Customer.

1.6 "Parties" are collectively Customer and City.

1.7 "kWh" is a kilowatt-hour, an energy charge billing unit.

1.8 "billing cycle" is the monthly bill.

1.9 "Force Majeure", as used herein, means unforeseeable causes beyond the reasonable control of and without the fault or negligence of the Party claiming force majeure. Such an occurrence may include, but is not limited to, acts of God, labor disputes, sudden actions of the elements, actions or inactions by federal, state and municipal agencies, and actions or inactions of legislative, judicial, or regulatory agencies.

1.10 "eligible rate" is the scheduled rate at which the Customer would qualify given historical consumption.

1.11 "totalization" is the aggregation of individual meter data so as to create a single billed account under a single rate schedule.

1.12 "current eligible average rate winter/summer" is the average based on the total energy charges, demand charges and market cost adjustments and other normal applicable charges totaled divided by total energy (kWh) that apply to the contract accounts defined in Exhibit A for the eligible rate utilizing actual billed energy and demand available from the current actual bill average rate determination by season.

Section 2. Rate Application.

The billing cycle charge for the Customer shall transition to the eligible rate for the Facilities and Accounts defined in Exhibit A over a two year phased transition. Exhibit A also defines what Facilities and Accounts will be totalized or treated as individual facilities for Billing purposes. There shall be two phases to the transition to full billing under the eligible rate. The periods are as follows:

Phase I July 1st, 2003 to June 30th, 2004

Phase II July 1st, 2004 to June 30th, 2005

In Phase I, the billiing cycle shall be based on a energy charge of 7.50 cents per kwh plus a customer charge of \$250.00 per month with no other charges for energy delivery.

In June of 2004, the consumption of the Customer will be examined as to what eligible rate the Customer would normally be assigned to. The average eligible winter rate and summer rate will be determined for the eligible rate schedule. The transition rates will be the eligible rate schedule by season discounted by the transition percentage. The transition percentage expressed in decimal is calculated by season and is determined as follows:

$$1.0 - ((1.0 - (7.5 / \text{eligible average rate})) / 2.0)$$

This transition percentage holds only for Phase II. If the calculated transition percentage is greater than 1.0 the transition percentage will be 1.0

After Phase II ends and this contract expires, the Customer shall be assigned to the eligible rate at that time. The City sha provide the Customer a copy of the determined transition discounted rates by June 15th, 2004.

Section 3. Term of Agreement.

- 3.1 Upon signing by all Parties, this Agreement shall be binding for bills rendered on or after July 1st, 2003, and shall remain in effect subject to Paragraphs 3.2 and 3.3 below, for bills rendered through June 30th, 2005.

3.2 If either party fails to perform any of the provisions of this Agreement, the other party may, by written notice given within thirty days of such failure to perform, terminate this agreement. Customer may appeal such termination in writing to the Electric Utility Director. This is in addition to any other legal recourse Customer may have.

3.3 This Agreement cannot be terminated without mutual consent of the Parties.

Section 4. Force Majeure.

4.1 If either Party because of Force Majeure is rendered wholly or partly unable to perform its obligations under this Agreement, that Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected, provided that:

The non-performing Party, within two weeks after the occurrence of the Force Majeure, shall give the other party a written report describing the particulars of the occurrence.

The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure.

4.2 No obligations of either Party which arose before the occurrence causing the suspension of performance are excused as a result of the occurrence.

4.3 The non-performing Party uses its best efforts to remedy its inability to perform. This sub-paragraph shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgement of the Party involved in the dispute, are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party having the difficulty.

Section 5. Assignments.

- 5.1 Neither Party shall voluntarily assign its rights nor delegate its duties under this Agreement without the written consent of the other Party.

Section 6. Amendments.

- 6.1 This Agreement may be amended only by written instrument executed by the Parties or their successors.

Section 7. Severability.

- 7.1 In the event that any of the terms, covenants, or conditions of this Agreement shall be held invalid, the Parties intend that all other terms, covenants, and conditions and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that such provisions are not severable from all other provisions of this Agreement.

Section 8. Governing Law.

- 8.1 This Agreement shall be interpreted, governed by, and construed under the laws of the State of California.

Section 9. Counterparts.

- 9.1 This Agreement may be executed in counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

Section 10. Headings.

- 10.1 The headings to the articles in this Agreement are intended for convenience only and not for the purpose of interpreting the provisions of this Agreement.

Section 11. Notices.

- 11.1 Any notice, demand or request required or permitted to be given by either Party to the other and any instrument required or permitted to be tendered or delivered by either Party to the other may be so

given, tendered or delivered, as the case may be, by depositing the same in any United States Post Office with postage prepaid, for transmission by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address designated below. Changes in such designation may be made by notice similarly given.

11.2 All written notices or questions shall be directed as follows:

To City: ELECTRIC UTILITY DIRECTOR

 CITY OF LODI

 1331 SOUTH HAM LANE

 LODI CA 95242-3995

To Customer: Epic Plastics

 104 E. Turner Road

 Lodi, CA 95242

Section 12. Non-waiver.

12.1 None of the provisions of the Agreement shall be considered waived by either Party except when such waiver is given in writing. The failure of any Party at any time or times to enforce any right or obligation with respect to any matter arising in connection with this Agreement shall not constitute a waiver as to future enforcement of that right or obligation or any right or obligation of the Agreement.

Section 13. Warranty of Authority.

- 13.1 Each of the Parties which has executed and delivered this Agreement represents and warrants that it has agreed to be bound by all the terms, covenants, and conditions of this Agreement and has acted with all the requisite capacity and authority and approval of its governing body.

IN WITNESS THEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers and their seal to be affixed, as of the day and year herein written.

CITY OF LODI

EPIC PLASTICS

H. Dixon Flynn
City Manager

Craig Boblitt
Owner/President

Date

Date

Approved as to Form:

Randall A. Hays
City Attorney

ATTEST:

Susan J. Blackston
City Clerk

Exhibit A

Customer Name:Epic Plastic

Current Contract Accounts

Current Rate	Primary/Secondary	Meter	Account #	Totalize	Location Address	
G13	Secondary	26697	47856-0	All Secondary	104 E. Turner Rd. #1	These four meters are on the North End of building,parking lot, inside security cage.
G13	Secondary	26688	47857-8	All Secondary	104 E. Turner Rd. #2	
G13	Secondary	25680	47858-6	All Secondary	104 E. Turner Rd. #3	
G11	Secondary	20573	48858	All Secondary	104 E. Turner Rd. #4	
G13+	Secondary	29863	48858	All Secondary	104 E. Turner Rd.	These two meters are in production area on west wall
G13+	Secondary	29870	48858	All Secondary	104 E. Turner Rd.	

If eligible rate does not have a secondary rate, the rate will be the primary rate plus 5%

RESOLUTION NO. 2003-184

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING
THE CITY MANAGER TO EXECUTE CONTRACTS BETWEEN
THE CITY OF LODI AND CURRENT INDUSTRIAL CONTRACT
CUSTOMERS AND/OR NEW CONTRACT CUSTOMERS,
TRANSITIONING THESE CUSTOMERS TO A STANDARD
RATE OVER A THREE- OR FOUR-YEAR PERIOD

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lodi does hereby authorize the City Manager to execute contracts between the City of Lodi and current industrial contract customers and/or new contract customers (as listed below), transitioning them to a standard rate over a three- or four-year period.

Transition Rate Contract:

Lodi Iron Works
CertainTeed
Schaefer Systems, Inc.
Pacific Coast Producers

Significant New Customer Contract

Epic Plastics

Dated: October 1, 2003

I hereby certify that Resolution No. 2003-184 was passed and adopted by the City Council of the City of Lodi in a regular meeting held October 1, 2003, by the following vote:

AYES: COUNCIL MEMBERS – Beckman, Hansen, Howard, Land, and
Mayor Hitchcock

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON
City Clerk